

FILED
JAMES BONINI
CLERK
05 DEC 22 PM 4:06

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <div style="text-align: center; font-size: 1.2em; font-weight: bold;">1:05 CV 821</div>
Name of Movant Steven Jones	Prisoner's No. SPIEGEL, 03507061	Docket No. CR1-02-004-2
Place of Confinement U.S.P. Big Sandy P.O. Box 2068 INEZ, Kentucky 41229		
<div style="text-align: right; font-size: 0.8em;">(Include name upon which convicted)</div> <div style="display: flex; justify-content: space-between; align-items: center;"> UNITED STATES OF AMERICA v STEVEN JONES </div> <div style="text-align: right; font-size: 0.8em;">(Full name of movant)</div>		

MOTION

1. Name and location of court which entered the judgment of conviction under attack _____
Southern District of Ohio at Cincinnati
2. Date of judgement of conviction _____
2/5/02
3. Length of sentence _____
100 months
4. Nature of offense involved (all counts) _____
T 18 USC 2113(a) AND 2
BANK Robbery
5. What was your plea? (Check one)

(a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐
6. Kind of trial: (Check one)

(a) Jury ☐
 (b) Judge only ☐
7. Did you testify at trial?
 Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
 Yes ☐ No ☐

If you did appeal, answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of Result _____

9. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any federal court?
Yes ☐ No ☐

1. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court _____
- (2) Nature of proceedings _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
- (5) Result _____
- (6) Date of result _____

- (b) As to any second petition, application or motion, give the same information:

- (1) Name of Court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of Result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of Result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐(3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

SEE supporting attached memorandum

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this matter, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for relief. You may raise any ground which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary or with understanding of the nature of the charge and the consequences of the plea.
- (b) Convictions obtained by use of coerced confession.
- (c) Convictions obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Convictions obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Convictions obtained by a violation of the protection against self-incrimination.
- (f) Convictions obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Convictions obtained by the violation of the protection against double jeopardy.
- (h) Convictions obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

B. Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (tell your short briefly without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgement under attack?
Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes ☐ No ☐

17. Do you have any future sentences to serve after you complete the sentence imposed by the judgement under attack?

Yes ☐ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on:

12/20/05
(date)

Steven Jones
Signature of Movant

RECEIVED
FILED
JAMES BONINI
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

05 DEC 22 PM 4:06

U.S. DISTRICT COURT
SOUTHERN DISTRICT OHIO
WEST LEBANON, OHIO

STEVEN JONES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

1:05 CV 821

CASE NO. CR1-02-004-2

MEMORANDUM IS IN SUPPORT OF THIS T.28 USC SECTION
2255 MOTION TO VACATE, CORRECT, OR SET ASIDE SENTENCE
BY PERSON IN FEDERAL CUSTODY.

JURISDICTION

THE JURISDICTION OF THIS COURT IS FOUNDED ON T.28 USC SECTION
2255 6(3); A ONE YEAR PERIOD OF LIMITATION SHALL APPLY TO A
MOTION UNDER THIS SECTION, THIS LIMITATION PERIOD SHALL
RUN FROM THE LATEST OF--:

- (3) The date on which the right asserted was initially recognized
by The Supreme Court, if that right has been newly recognized
by The Supreme Court and made retroactively applicable to
to cases on collateral review;

The petitioner's sentence became final on June 4, 2002 follow-
ing sentencing to a plea of guilty for violating T.18 USC
Section 2113(a) Bank Robbery.

Petitioner has not filed a T.28 USC Section 2255 Motion and he asserts this initial motion is timely pursuant to T.28 USC Section 2255 6(3) where it is being filed within One year of the Supreme Court's decision in Blakely v. Washington, 542 U.S.--(2004) and United States v. Booker, 543 U.S.--(2005). Respectively these decisions announces new rule of Constitutional Law. A case announces a new Constitutional Rule if the Supreme Court based it's decision in the constitution and the rule it announces was not dictated or compelled by precedent. Beard v. Banks, 124 S.Ct. 2504 (2004). The Sixth Circuit spoke retroactivity in Wiegand v. U.S., 380 F.3d 890 (6th Cir. 2004) to the effect, any federal court can make retroactive decisions on the initial T.28 USC Section 2255 6(3) proceeding. Petitioner requests this court follow the reasoning in Wiegand and apply Blakely/Booker/ Fanfan accordingly.

FACTUAL BACKGROUND

The petitioner plead guilty to T.28 Section 2113(a) Bank Robbery. As a result of this conviction he received a term of 100-months imprisonment.

ARGUMENT

In light of the string of the Supreme Court decisions bearing a New Rule of Constitutional Law beginning with Apprendi v. New Jersey, 530 U.S. 466 (2000); continuing through, Blakely v. Washington, 543 U.S.--(2004) and on into the recent decision in, U.S. v. Booker, 543 U.S.--(2005); Petitioner's sentence is Unconstitutional, in direct violation of the Sixth Amendment to the Constitution. In the above mentioned decisions the Supreme Court held; The Constitution requires that any fact that increases the penalty for a crime beyond the prescribed statutory

maximum, other than the fact of a prior conviction, must be submitted to a jury and proven beyond a reasonable doubt, or admitted by the defendant in a plea of guilty.

The petitioner received a (4) level enhancement to his base offense level for facts he did not admit to when he plead guilty. On June 4, 2002 Petitioner was sentenced in the Southern District of Ohio to 100 months imprisonment for violating T.18 USC 2113 (a) Bank Robbery. During the sentencing hearing the sentencing Judge determined the amount taken in the Robbery was more than \$50,000 dollars and that this was a federally insured financial institution. The Judge enhanced petitioner's base offense levels pursuant to USSG §2B3.1 (b)(1) and USSG §2B3.1 (b)(7)(E). These enhancements moved his base offense level beyond what was authorized by his plea of guilty. To begin with Petitioner's base offense level was (20) USSG §2B3.1 (a) then there was a (2) level enhancement under USSG §2B3.1 (b)(1) and (2) level enhancement under USSG §2B3.1 (b)(7)(E); making his guidelines range base offense level (24) and criminal history category of (6) for sentencing range of 100-125 months.

Bearing the new Supreme Court Ruling Blakely/Booker/Fanfan/in mind, petitioner did not plea guilty to USSG §2B3.1. (b)(1) are USSG § 2B3.1 (b)(7)(E) enhancements and his sentence should not host it, his sentencing range should be base offense level (20) and criminal history category (6) for a range of 70-87 months, not the present guideline range of base offense level (24) and criminal history category (6) 100-125 months.

CONCLUSION

Petitioner has demonstrated in his memorandum, his sentence is Unconstitutional and he humbly request this court to correct his sentence pursuant to the Rule announced in Blakely/Booker/Fanfan.

I CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT UNDER PENALTY OF PERJURY.

Executed on 12/20/05

Respectfully Submitted;

Steven Jones
Steven Jones
Reg. #03507-061
U.S.P. Big Sandy
P.O. BOX 2068
Inez, KY 41224

CERTIFICATE OF SERVICE

I, Steven Jones, do certify that one (1) original and two (2) copies of the foregoing motion was mailed to the Office of the United States District Clerk:

326 Potter Stewart U.S. Courthouse
100 E. Fifth St.
Cincinnati, OH 45202

U.S. Attorney
220 U.S.P.O. Courthouse
Stl Walnut St.
Cincinnati, OH 45202

Executed: 12/20/05

Respectfully Submitted;

Steven Jones
Steven Jones
Reg. No. #03507-061
U.S.P. Big Sandy
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